

**BEST AVAILABLE COPY**REMARKS/ARGUMENTS

In paragraphs 4 and 5 of the office action, claims 1-7 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. The examiner argues that the claims are non-statutory because they recite software components of updating the software representing functional descriptive material without a computer readable medium or being computer implemented, and that the program is per se not tangibly embodied. The examiner argues that claims 1-7 amount to only an abstract idea and are non-statutory.

The rejection is respectfully traversed and reconsideration is requested. Claims 1-7 are not directed to software as the examiner asserts, but are rather directed to a method of controlling processors in a network to accomplish data updating software in the network. This is clearly indicated as statutory in EXAMINATION GUIDELINES FOR COMPUTER-RELATED INVENTIONS, FINAL VERSION from the Patent and Trademark Office which at IV.2.(b)(ii) (pg17) gives an example of a statutory claim as "A method of controlling parallel processors to accomplish multi-tasking of several computing tasks to maximize computing efficiency." Claim 1 has been amended to include the steps of:

"providing a network comprised of a plurality of first type computers having a limited function range relative to a plurality of second type computers having a respective extended function range;

"providing in said network, a service being defined as comprising update services providing an updated facilities version to be performed by the second type computers to said first type computers; . . . ." These steps are clearly not abstract ideas, as asserted by the examiner, and are statutory.

It is respectfully submitted that claims 1-7 are statutory under 35 U.S.C. 101, and allowance is respectfully requested.

In paragraphs 6-7, claims 1, 3, 4, 8, 10, 11, 15, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,999,740 to Rowley (hereinafter called Rowley). The rejection is respectfully traversed, and reconsideration is respectfully requested.

Rowley is directed to an updating mechanism for software in which a remote file server has later versions of software to be downloaded onto client computers in a network. As pointed out at Col. 2, lines 59-62, "A list of user names indicating which users are permitted to download the application. If no user names are specified, any user is permitted to download the application." Further at Col. 3, lines 26-28, in Rowley, "Each client computer includes an update program 110, which provides a mechanism for updating the software applications installed on that computer, . . ." Also at Col. 5, lines 25-26, "FIGS. 3A and 3B show the operation of the update program 110. This program can be run at any time on request by a user". Thus in Rowley, the user must request to update a program to be run on the client. Col. 3, line 40 to Col. 5, line 21 of Rowley, describes an uploader program in which an administrator uploads to a server or servers, an updated application. However, in Rowley, the uploaded application on the server or servers, is not for execution of the application on the server, but is to be downloaded by a user from the server upon request by the user (see above).

Claim 1 has been amended to claim:

"issuing reboot requests exclusively from at least one of the second type of computers in said second subgroup to at least one of the first type of computers in said first subgroup; and

"responsive to said reboot request, sending boot messages from said at least one of the first type computer in said first subgroup to said at least one of said second type computer in the second subgroup for loading said at least one computer of the first subgroup with said updated facilities version during continued operation of the unselected plurality of first type computers with a former version means." Thus, in claim 1, the dependent computer in the first subgroup does not request the update, as in Rowley, but the supplier computer in the second subgroup exclusively requests the dependent computer to reboot so that the dependent computer sends boot requests to the supplier computer to send the updated version of the application software. This update method is not taught or suggested in Rowley. This process is disclosed at paragraphs [0062] and [0063] of the application under "validation of the new code load on dependent nodes". Equivalent amendments are made in independent claims 8 and 15. It is submitted that claims 1, 8 and 15, and all claims depended therefrom, are allowable under 35 U.S.C. 102(b), which allowance is respectfully requested.

In paragraphs 8-10, claims 2, 9, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rowley in view of US Patent No. 6,701,356 to Condict et al. (hereinafter called Condict), and claims 5-7, 12-14, and 19-21 under 35 U.S.C. 103(a) as being unpatentable over Rowley in view of US Patent No. 6,480,901 to Weber et al. (hereinafter called Weber). The rejections are respectfully traversed and reconsideration is requested.

Condict discloses a method and apparatus for automatically downloading profile and image files of optical network elements. There is no teaching or suggestion in Condict that the elements of the system be grouped in first and second subgroups where the

second subgroup exclusively updates elements of the first subgroup, as claims in claims 1, 8 and 15. In col. 2, line 61 to col. 3, line 3, the update of a profile of each network node is described wherein the new software profile file is first downloaded into the memory of each network node as the node control processor secondary software profile file. The secondary node control processor image is then reconciled with the entry in the new software profile. In independent claims 1, 8 and 15, as amended, a computer in the second group exclusively sends a reboot request to a computer in the first group, and that computer responds with a boot request for the updated software to be loaded while the other computers in the first subgroup continue to run the old version without interruption. As set out at Col. 3, line 18 of Conduct, all secondary images are reconciled with the new software profile in the node control processor before the primary and secondary software profile files are switched. It is respectfully submitted that Rowley and Conduct, either alone or in combination, do not teach or suggest claims 1, 8 and 15, as amended.

Weber discloses a system for monitoring and managing devices on a network. As discussed at col. 20, lines 35-37, a user 1110 in the client 1102 selects the storage system which it would like updated with the source configuration description. Each of the firmware sets from a firmware repository 1128 are applied to the controller 1126 in the client. After each of the controller firmware sets have been updated, the configuration description is sent to the destination devices (col. 20, lines 53-56). There is no teaching or suggestion in Rowley or Weber, either alone or in combination, that the elements are grouped in first and second subgroups wherein a computer in the second subgroup sends a reboot request to a computer in the first subgroup wherein the first subgroup computer send a boot request to the computer in

the second subgroup loading the update, as claimed in claims 1, 8 and 15.

It is respectfully submitted that claims 1, 8 and 15, and all claims depended therefrom, are allowable under 35 U.S.C. 103(a) over Rowley in view of Condict and Rowley in view of Weber, which allowance is respectfully requested.

It is respectfully submitted that the application is now in condition for allowance, which allowance is respectfully requested.

RESPECTFULLY SUBMITTED



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